IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH

C.O.C.P. No.1397 of 2004 (O&M)
Date of Decision:- 11.09.2006

S.M.Builders & Engineers ....Petitioner

through
Mr.D.K.Gupta, Advocate

vs.

Arun Goel, IAS & anr. ....Respondents

through
Mr.Govind Goel, Advocate

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT

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SURYA KANT, J.

The petitioner filed C.W.P.No.6765 of 2004 in which a direction to the Punjab Small Industries and Export Corporation Ltd. to release the due payments on account of the works executed by the petitioner pursuant to the contract dated 11.10.2000, was sought. The said writ petition was disposed of by this Court vide order dated April 27, 2004 with a direction to the respondents to consider the justice demand notice which the petitioner had already served upon the authorities and dispose of the claim by passing a speaking order after granting an opportunity of being heard.

Alleging non-compliance of the aforesaid order, this contempt petition has been filed.

In response to the show cause notice, the second respondent filed his affidavit and along with the same, an order dated 11.12.2004 which

was claimed to be a speaking order, was appended.

On a consideration of the aforesaid order and having noticed that the same was passed without hearing the petitioner, this Court vide order dated 7.7.2005 observed that the respondents have not made true and faithful compliance of the order dated April 27, 2004 passed by this Court. However, in view of an offer made by learned counsel for the respondents, which was accepted by learned counsel for the petitioner also, the matter was further adjourned to enable the respondents to re-consider the petitioner's claim.

It appears that pursuant to the above-stated order, the representative of the petitioner appeared before the first respondent on 11.7.2005 and filed written submissions in support of its claim. The petitioner also gave in writing that "right of arbitration proceedings as envisaged in the agreement" was being duly reserved. Thereafter, the Managing Director of the Corporation has passed another order dated (Annexure A-1) holding that the petitioner is not entitled for any payment.

Learned counsel for the petitioner contends that the second order dated 20.7.2005, referred to above, too is not a bona fide compliance of the directions issued by this Court inasmuch as various contentions raised by the petitioner in its written submissions have not been dealt with. Besides, it is argued that though a right to seek reference to the arbitration has been kept reserved by the petitioner, however, the petitioner has a genuine apprehension in mind that in view of the orders passed by the higher authorities, it may not get justice from the Arbitrator also, who would be none-else than an Engineer of the Corporation.

After hearing learned counsel for the parties and having regard

to the fact that the directions issued by this Court to consider and dispose of the petitioner's claim by passing a speaking order have been complied with by the respondents, this petition is disposed of with liberty to the petitioner to impugn the speaking order dated 20.7.2005 before an appropriate forum, if so required or advised or in the alternate, it may raise the arbitration dispute and if any such claim is made by it, the respondents shall act upon the same promptly and will appoint the Arbitrator as per the agreement between the parties, who shall consider the petitioner's claim uninfluenced of the observations or findings returned by the Managing Director in the two speaking orders which have been passed under the directions issued by this Court.

Rule discharged.

September 11, 2006 **(SURYA KANT)**
poonam **JUDGE**